IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/12/2003

CORAM

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

Writ Petition No.4973 of 2002

A.P.John Paulraj .. Petitioner

-Vs-

1. The Vice Chancellor
University of Madras
Chennai-600 005.

2. University of Madras,
represented by its Registrar,
Chennai-600 005.

3.The Chairman,
University Grants Commission,
Bhadurshah's Zafar Marg
New Delhi-110 002.

4.The Chairman,
Board of Studies of Philosophy
Head of Department of Philosophy
University of Madras
Chennai-600 005.

5.The Secretary to Government of
Tamil Nadu,
Department of Higher Education,
Secretariat, Chennai-600 009.

6. L.Antony Savari Raj .. Respondents

Writ petition under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the second respondent University, dated 8.11.2000 vide No.D.1(A & B)/TE/2000/3091, quash the same and direct the respondents 1 to 5 and other members of the Syndicate of the second respondent University to appoint the petitioner as Lecturer in the Department of Philosophy in the second respondent University in the place of the sixth respondent.

For petitioner : Mr.N.Muralikumaran
for Mr.G.Rajan

For respondents : Mr.N.R.Chandran
Advocate General,
assisted by Mr.Maharajan
for R1, R2 and R4.

Mr.M.G.H.Varadarajan
Addl. Govt. Pleader for R5

Mr.M.T.Arunan
A.C.G.S.C for R3

Mr.G.J.R.Antony Kennedy
for R6.

:ORDER

The petitioner seeks to challenge the appointment of sixth respondent as a Lecturer in the Department of Philosophy in the second respondent University in the proceedings of the second respondent University, dated 8.11.2000 vide No.D.1(A & B)/TE/2000/3091. The petitioner also seeks for a direction to appoint him in the said post, in the place of the sixth respondent.

2. The brief facts, which led to the filing of the writ petition can be traced as under:-

The second respondent University published an advertisement in English daily "The Hindu", dated 7.7.2000, calling for applications from the eligible candidates for the post of Lecturers in the various Departments of the University. One of the posts related to two vacancies in the post of Lecturers in the Department of Philosophy. Out of the two posts, one was meant for Scheduled Caste candidates and another one was for General Category. It is for that post, namely, the one meant for General Category, the contest came to be made by the petitioner along with the sixth respondent. It is claimed that 43 candidates applied for the two posts and on scrutiny, 41 were found to be eligible, including the petitioner, for interview.

3. In the interview, the sixth respondent came to be recommended for the post of Lecturer in the General Category, who came to be ultimately appointed in the said post. The challenge of the said appointment of the sixth respondent is made by the petitioner on the ground that the sixth respondent did not satisfy the qualification meant for the said post, viz., Lecturer in the Department of philosophy. According to the petitioner, as per the notification dated 7.7.2000, the general essential qualification is a good academic record with 55% of marks at the Master's level apart from qualifying himself in the National Eligibility Test (NET) or an accredited test and at the discretion of the University, Ph.D holders from NET or to require NET in their case, either as a desirable or essential qualification, to be exempted. The petitioner contended that the sixth respondent herein did his Master's degree from an unrecognised institution, viz., Jnana Deepa Vidyapeeth, Pune

and therefore, he did not have the required qualification to join M.Phil Course, though he was allowed to join M.Phil Course by the second respondent University earlier in 1990 who was also allowed to do his Ph.D thereafter.

4. The petitioner would therefore contend that the sixth respondent, not having possessed Master's degree from a recognised institution of the second respondent University, irrespective of his M.Phil and Ph.D with NET, cannot be treated to be a qualified candidate to apply for the post of Lecturer in the Department of Philosophy. It is therefore contended that when the second respondent lacked in having the basic qualification, his appointment by the impugned proceedings dated 8.11.2000, is not valid and therefore the same is liable to be set aside. Reliance was placed upon the Judgment of the Honourable Supreme Court in Director, A.I.I.M.S v. Nikhil Tandon, reported in AIR 1996 SUPREME COURT 3161, in support of the above submissions made on behalf of the petitioner.

5. As against the submissions of the petitioner, the learned Advocate General, appearing on behalf of the second respondent University, in the first place contended that the petitioner has no locus standi to question the appointment of the sixth respondent. According to the learned Advocate General, the petitioner earlier filed a Public Interest Litigation in W.P.No.21923 of 2000, which came to be dismissed by the Division Bench of this Court and in the circumstances, he cannot be allowed to question the appointment of the sixth respondent in this petition. It was then contended that the petitioner himself is not qualified, inasmuch as he does not possess NET or an equivalent accredited test and therefore, on this ground as well, he is not entitled to question the appointment of the sixth respondent.

6. Without prejudice to the above contentions, the learned Advocate General contended that in the case of the sixth respondent, by virtue of the powers of the Syndicate as available under Section 19 of the Madras University Act, while permitting the sixth respondent to pursue his M.Phil course in the second respondent University, the P.G. degree obtained by him from Jnana Deepa Vidyapeeth, Pune was recognised as equivalent to the P.G. degree of the Madras University and in the circumstances, such an exemption once granted in favour of the sixth respondent, would entitle him to seek for the appointment to the post of Lecturer, as notified in the Notification, dated 7.7.2000. According to the learned Advocate General, once an exemption is granted, such exemption would hold good for all time to come and it cannot be held that such an exemption should be restricted only for the admission of the sixth respondent to the M.Phil Course in the year 1989.

7. In the counter affidavit filed on behalf of the sixth respondent, it was pointed out that the sixth respondent passed his M.Ph. in Philosophy in I class in 1987 from Jnana Deepa Vidyapeeth, affiliated to Pontificial Atheenam, Pune, that he passed M.Phil in 1990 and also Ph.D in Philosophy in 1995 from the University of Madras. It was further pointed out that the eligibility of the sixth respondent to pursue his M.Phil Course was scrutinised by the Board of Studies, which submitted its remarks through its Chairman on 8.11.1989, which was placed before the Statutory Sub Committee of Syndicate in its meeting held on 11.6.1990, which recommended the admission of

the sixth respondent to pursue his M.Phil Course as a special case, which was approved by the Syndicate in its meeting held on 21.6.1990.

8. The learned Advocate General relied upon an earlier Order of this Court, dated 10.11.2003 in W.P.No.4370 of 2000 (T.Jeyasingh and others v. The Tamil Nadu Water Supply and Drainage Board, rep. by its Managing Director and others), wherein this Court followed the Division Bench Judgment of this Court, reported in 1982 MLJ 294 (The Government of Tamil Nadu, rep. by Secretary to Govt., Commercial Taxes and Religious Endowment Department, Madras-9 and another v. M.N. Raghunathan), which Judgment was also followed by another Division Bench in W.A.No.327 of 1990 by its Judgment dated 25.4.1990, which was also confirmed by the Honourable Supreme Court in S.L.P.Civil No.9479 dated 21.9.1990.

9. Mr.Antony Kennedy, learned counsel for the sixth respondent also made his submissions in tune with the submissions made by the learned Advocate General. The learned counsel placed reliance upon the Judgment reported in 'Km.Neelima Misra v. Dr.Harinder Kaur Paintlal and others' (AIR 1990 SUPREME COURT 1402); 'Osmania University rep. by its Registrar v. Abdul Razyees Khan and another' □ All India Services Law Journal III □ 1997(1) and 'The Chancellor and another v. Dr. Bijayananda Kar and others' (AIR 1994 S.C. 579), wherein it has been held that in academic matters, the Courts should be slow in interfering with the appointments made.

10. Having heard the counsel for the parties, I am of the view that the submissions made on behalf of second and sixth respondent merits acceptance.

11. Though on behalf of the second respondent, the petitioner's locus standi was questioned on the ground that the Public Interest Litigation petition, earlier preferred by the petitioner, came to be rejected by the Division Bench in respect of the appointment of the sixth respondent itself, I find that in the said proceedings, the petitioner, representing himself as President of one National Integration Council, challenged the selection of the sixth respondent. Nevertheless, the said Writ Petition in W.P.No.2193 of 2000 came to be disposed of by the First Bench on 22.11.2000 with a direction to the second respondent University to dispose of the representation made challenging the appointment of the sixth respondent.

12. Pursuant to the direction of the Division Bench, the representation of the said petitioner is stated to have been rejected on 10.1.2002. Therefore, in fact, the earlier writ petition, preferred by one National Integration Council, in which the petitioner is said to be its President, was not disposed of on merits dealing with the various contentions raised by the said petitioner. In such circumstances, I am of the view that

the disposal of the said writ petition by the Division Bench on 22.11.20 00 need not stand in the way of considering the contentions of the petitioner in this writ petition.

13. As far as the other submission, namely, that the petitioner

himself was not qualified to aspire for the post of Lecturer, inasmuch as he does not hold NET or accredited test, here again, I do not wish to deprive the petitioner of his rights to question the validity of the appointment of the sixth respondent, as it is common ground that the petitioner's claim for the post was also considered by the second respondent and was found to be not satisfying enough to be appointed over the claims of the sixth respondent. In other words, the candidature of the petitioner was not rejected on the ground that he was not qualified, but on his own merits. Therefore, once the qualification prescribed in the Notification itself states that at the discretion of the University, persons having Ph.D can be exempted from holding NET or its equivalent, the consideration of the claims of the petitioner for the post of Lecturer by the second respondent, can be taken to mean that the petitioner was found to be qualified to be considered for being appointed and in such circumstances, the petitioner's challenge to the appointment of the sixth respondent can be examined in this writ petition. Therefore, de hors the above stand taken on behalf of the second respondent, I wish to deal with the contentions of the petitioner raised in this writ petition as against the appointment of the second respondent.

14. After clearing the abovesaid hurdles, when the claim of the petitioner in the writ petition is considered, the sole challenge to the appointment of the sixth respondent is on the ground that he did not have the basic qualification, namely, P.G. degree in order to be considered for the post of appointment of Lecturer in the Department of Philosophy. In this context, if the powers of the second respondent University and its Syndicate, as provided under Section 19 of the Madras University Act is considered, Section 19(p) is to the following effect:-
"to make Ordinances regarding the admission of students to University or prescribing examinations to be recognised as equivalent to University examinations." (emphasis added)

15. By virtue of the abovesaid power vested with the Syndicate, the Syndicate is stated to have permitted the sixth respondent to do M.Phil degree course, though the P.G. degree obtained by him from Jnana Deepa Vidya Peeth, Pune was not one recognised by the University Grant Commission or by the second respondent University. Therefore, the question is whether such a permission granted would enure to the benefit of the sixth respondent even to apply for the post of Lecturer, as notified in the Notification dated 7.7.2000.

16. The proceedings relating to permission so granted by the second respondent University, through its Syndicate, were placed before this Court by the second respondent University. A perusal of the abovesaid proceedings disclose that after the sixth respondent made an application, dated 5.4.1989 for getting himself admitted to do M. Phil (Philosophy) in the academic year commencing from June, 1989, as per the rules, he also applied for the Eligibility Certificate from the second respondent University, inasmuch as his basic qualification was M.Ph.(Philosophy) from Jnana Deepa Vidya Peeth, Pune, which was not a recognised one of the University Grants Commission.

17. The sixth respondent was called upon to submit the various

Statutes and Ordinances of Jnana Deepa Vidya Peeth, Pune and also the Handbook and Calendar of the said Institution, which conferred the degree of M.Ph. to the sixth respondent. Thereafter, the case of the sixth respondent was placed before the Courses Committee of the Syndicate by the second respondent University, which held its meeting on 17.7.1989, where the case of the sixth respondent was considered. It was thereafter deferred to be considered, which was again taken up for consideration in its subsequent meeting. Ultimately, the Syndicate referred the matter to the Board of Studies and the Board of Studies considered the case of the sixth respondent with reference to the various materials placed before it and ultimately, in its meeting, held on 8.11.1989, resolved that the sixth respondent should be held to be eligible for admission in M.Phil. Course, inasmuch as the perusal of the records showed that the sixth respondent had taken papers of subjects both in Indian and Western Philosophy, which were common with the M.A. Degree of Branch V-A and V-B conducted by the Madras University. Accordingly, the Board of Studies also recommended for granting permission to the sixth respondent to pursue his M.Phil. Course.

18.Still thereafter, the Courses and Curriculum Development Committee of the Syndicate, in its meeting held on 9.2.1990, considered the eligibility of the sixth respondent, who had passed M.Ph. (Philosophy) degree examination from Pontificial Atheenam, Pune, for admission to M.Phil (Philosophy) course in the second respondent University and approved the eligibility certificate to be issued to the sixth respondent for admission to M.Phil (Philosophy) course in the second respondent University. Subsequently, a communication was received from the University Grants Commission, dated 8.2.1990, received by the University of Madras on 14.2.1990 stating that Pontificial Atheenam, Pune was not established either by an Act of State Legislature or Central Legislature and therefore it was not competent to award degrees/ diplomas and therefore it was not recognised by University Grants Commission and the question of recognition of degrees/diplomas awarded by Pontificial Atheenam, Pune did not arise.

19. In such circumstances, the resolution of Courses and Curriculum Development Committee of the Syndicate, held on 9.2.1990, was placed before the Syndicate on 17.2.1990, in the light of the subsequent communication received from the University Grants Commission, dated 8.2.1990. However, the Syndicate of the second respondent University, in its meeting held on 17.2.1990, resolved to approve the Minutes of the meeting of the Courses and Curriculum Development Committee of the Syndicate held on 9.2.1990. Thus, the Syndicate of the second respondent University, on a detailed analysis of the case of the sixth respondent, with particular reference to the courses underwent by him in Jnana Deepa Vidya Peeth, and after much deliberations, resolved to accept the M.Ph. (Philosophy) secured by him from Jnana Deepa Vidya Peeth, Pune in order to permit him to pursue his M.Phil. Course in the second respondent University and thereafter, the sixth respondent also completed the Ph.D in the second respondent University in the year 1995.

20. In such circumstances, the ultimate resolution of the Syndicate, in its meeting held on 21.6.1990, approving the qualification of the sixth respondent as the basic Post Graduate qualification to be eligible for

pursuing his M.Phil. Course in the second respondent University became final and conclusive. As far as the said action of the Syndicate of the second respondent is concerned, the same was well within the powers of the Syndicate, as provided under Section 19 (p) of the Madras University Act, 1923. When such a statutory power, vested with the Syndicate of the second respondent, having been exercised in accordance with the provisions of the Madras University Act and such exercise having become final and conclusive and thereby, the basic qualification of the sixth respondent, namely, his Post Graduate qualification, thus having been recognised by the second respondent University, equating the same to the Post Graduate qualification in Philosophy of the second respondent University itself, it is too late in the day for the petitioner to contend that the sixth respondent was lacking in holding the said basic qualification for the post of the Lecturer in the Department of Philosophy. It will have to be held that the recognition accorded by the second respondent University to the sixth respondent permitting him to pursue his M.Phil. Course, would hold good for all time to come and the same cannot be restricted to the pursuance of his M.Phil. Course alone.

21. In fact, the said question has been thoroughly examined by the Division Bench of this Court in two Division Bench Judgments, namely, the one reported in 1982 MLJ 294 (cited supra) as well as the one rendered in the unreported decision in W.A.No.327 of 1990 dated 25.4.1990, which was also confirmed by the Honourable Supreme Court in S.L.P.Civil No.9479 dated 21.9.1990. In the Division Bench Judgment, reported in 1982 MLJ 294 (cited supra), the Division Bench has stated in para 7 to the following effect. "....This shows that the authorities thought it fit that the respondent even without passing Parts I and III of the Revenue Test is proficient in handling such subjects and that is why the exemption was granted while the respondent was appointed as Assistant. It is clear from the Annexure IV that for the post of Assistant also a person must pass Parts I, II and III of the Revenue Tests. Once he acquires the knowledge in the said subject, and that has been recognised by the Government by granting the exemption, it is too much on the part of the Government to state that the respondent must again pass the said test to qualify himself to the post of Superintendent....."

22. The principles set out in the abovesaid decision of the Division Bench when applied in the light of the power vested with the Syndicate under Section 19(p) of the Madras University Act, it can be safely held that the principles set out therein would equally apply to the case of the sixth respondent also. The very purpose of evaluating the sixth respondent's Ph.D degree obtained from Jnana Deepa Vidya Peeth, Pune, while permitting him to pursue his M.Phil Course and thereby equating it with the P.G.Degree of the Madras University, should be taken to mean that such a recognition so made by the Syndicate of the second respondent University should enure to the benefit of the sixth respondent also for the future pursuance of his academic career. It would be wholly unjustified and irrational to state that such a recognition and exemption, after a detailed evaluation, cannot be extended for the future appointment of the sixth respondent.

23. The acquisition of qualification of a person is not for mere mental satisfaction alone. Such an acquisition of qualification, once

recognised by a Statutory Body, especially, in the educational field, should be permitted to be utilised by the person who acquired such qualification, to be made available and made use of by others, who could also share his knowledge and experience gained by the acquisition of such special qualifications. To hold otherwise would be wholly illogical and defeat the very purpose of enabling the Syndicate to grant such a recognition or make such decisions an illusory one, which cannot be allowed to take place. As stated by me earlier, the Syndicate, before granting its permission in exercise of its power under Section 19(p), did not exercise the said power in a casual manner. On the other hand, a detailed examination of the course materials of the sixth respondent, undertaken by him while doing his P.G. Course in the Jnana Deepa Vidya Peeth, Pune, was studied by the Syndicate, by calling upon the Board of Studies, as well as, the Courses and Curriculum Committee of the Syndicate and after a report submitted by the abovesaid Bodies, the Syndicate, in its decision, held on 21.6.1990, decided to approve the sixth respondent's admission to M.Phil Course, though the Post Graduate degree possessed by him as on that date, was from an unrecognised Institution.

24. In such circumstances, I am unable to accept the stand of the petitioner that the recognition of the sixth respondent's M.Ph qualification from Jnana Deepa Vidya Peeth, Pune can be treated as equivalent of second respondent University's P.G. course only for the limited purpose of pursuing his M.Phil course and the same cannot be accepted for his appointment for the post of Lecturer.

25. As far as the reliance placed upon the Judgment of the Honourable Supreme Court, reported in AIR 1996 SUPREME COURT 3161 (cited supra), the same is clearly distinguishable. That was a case, where one Mr.Tandon, who applied for the post of Assistant Professor (Medical) was found qualified by All India Institute of Medical Sciences, in short A.I.I.M.S, though as a matter of fact, he did not have the superspeciality qualification, namely, D.M. The contention of Mr.Tandon was that he did the Ph.D in Cambridge University , which course consisted of three years and in the first two years of the said course, he did whatever subjects which were meant for the superspeciality course of D.M and therefore, the recognition of the same by A.I.I. M.S, while accepting his candidature, cannot be found fault with. When his appointment was challenged in the High Court of Delhi, the same came to be accepted both by the learned single Judge as well as by the Division Bench. When the matter went before the Honourable Supreme Court, the Honourable Supreme Court, while considering the Recruitment Rules of A.I.I.M.S., which is to the following effect:-
"A post-graduate qualification e.g. MD/MS or a recognised qualification equivalent thereto....."
held as under in para 12.
"12. We are of the opinion that the two years training at Cambridge University undergone by Tandon while working for his Ph.D cannot be treated as a qualification recognised as equivalent to D.M. Schedule-I to the A.I.I.M.S. Recruitment Rules speaks of D.M.qualification or a qualification recognised as equivalent thereto. It is not mere equivalence that is enough. It must also be recognised as equivalent. Recognised evidently means recognised by the Institute or at least by the Medical Council of India. Admittedly, neither

has recognised the said research work/training for two years in the Cambridge University as equivalent to D.M. It is agreed before us that the degrees awarded by the Cambridge University are not recognised in India since 1978. This means that even if Tandon had obtained his Ph.D. qualification from Cambridge University on or before October 7, 1992, it could not have been recognised as a qualification equivalent to D.M. If so, it is ununderstandable how the two years research/training put in by Tandon while working for the said qualification can be counted as a qualification recognised as equivalent to D.M. It may be equivalent; it may be more. But the question is whether it is recognised - and admittedly it is not. We are not impressed by the argument of Shri Jaitley that the words, "M.D. in Medicine with two years special training in Endocrinology" in the Recommendations of Medical Council of India with respect to the post of Professor in Endocrinology means two years' special training in Endocrinology anywhere in the world. The said words have to be read and understood in the context of the A.I.I.M.S. Recruitment Rules and the First Schedule thereto. The submission based upon the contrast in the language used in describing the qualifications for Professor in endocrinology and Professor in the department of Physical Medicine and Rehabilitation is unnacceptable. Sri Jaitely could not point out any such requirement against any other qualification in the said Recommendations. Based upon the use of the words, "in any approved Institution in India" in the qualifications mentioned for one among the several posts in the Recommendations, it is not possible to hold that the qualifications awarded by Institutions which are not recognised by the Medical Council of India or the training undergone in such Institutions has become recognised. The acceptance of this argument would mean that the qualifications not recognised by the Institute or Medical Council of India become recognised in this indirect manner. We cannot countenance such an argument."

26. Therefore, as against the stipulations contained in Recruitment Rules of A.I.I.M.S., the power of the Syndicate as contained in Section 19(p) of the Madras University Act varies in all respects. While, as per the Recruitment Rules of A.I.I.M.S., the A.I.I.M.S can only accept a recognised equivalent educational qualification, as per Section 19(p) of the Madras University Act, the Syndicate of the second respondent University itself possess all the powers to recognise a qualification as equivalent to the examinations of its own. In other words, while the Syndicate of the second respondent University has the statutory power to equate even an unrecognised degree or Post Graduate degree based on examination held by an Institution as equivalent to the examination of the second respondent University and consequently, recognise such a degree or Post Graduate degree for all its consequential purposes, such a power was not available with the A.I.I. M.S in its Recruitment Rules. The reading of the Recruitment Rules itself discloses that it can only act based upon any such recognition already made by any other competent Board. In such circumstances, the ratio of the said decision of the Honourable Supreme Court is totally inapplicable to the facts of this case.
27. Therefore, looked at from any angle, the challenge of the petitioner to the appointment of the sixth respondent in the impugned order on the abovesaid basis, cannot be countenanced. The writ petition, therefore, fails and the same is dismissed.

Index: Yes.
Internet: Yes.
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To

1. The Vice Chancellor
University of Madras
Chennai-600 005.

2.The Registrar, University of Madras,
Chennai-600 005.

3.The Chairman,
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Bhadurshah's Zafar Marg
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Head of Department of Philosophy
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